

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

ORIGINAL

74-1127
~~#8027~~

B
PJS

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,
—against—

ROBERT MATHERSON and CAROLYN MATHERSON,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX



LA ROSSA, SHARGEL & FISCHETTI
Attn: 178 for Defendants-Appellants
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

THE UNITED STATES)
vs.) 73 CR 691
ROBERT MATHERSON) (73 CR 692, 693, 694, 710)

PROCEEDINGS

7-25-73 Information filed
7-25-73 Memorandum from Ch., Judge Mishler inserted
 in this file.
7-26-73 Before TRAVIA, J. - Case called - No appearance
 by Deft. - Bench warrant ordered.
7-26-73 Notice of appearance filed.
7-27-73 Bench Warrant issued.
7-27-73 Before TRAVIA, J. - Case called. - Defts. pre-
 sent. - Bench warrant vacated. Case adjd. to
 Sept. 17, 1973 for all purposes - Defts. OR
8-10-73 Stenographers Transcript dated 7/26/73 filed.
9-17-73 Before Travia, J. - Case called and adjd. to
 9-18-73 for trial.
9-18-73 Before TRAVIA, J. - Case called for trial -
 jury waived - Facts stipulated. Decision re-
 served - Deft's briefs by 10/10/73 - Govt's
 Briefs by 10/17/73. Bail cont'd.
10-12-73 Defts. Robert and Carolyn Matherson's Memorandum
 of Law filed.
10-24-73 Stipulation filed that the deft. had not been

issued a Fire Island National Seashore Permit
(stipulation dated 9-18-73).

- 10-29-73 Govts. Memorandum of Law filed. (This Memorandum also related to cases 73 CR 692 to 73 CR 697 and also 73 CR 710. (Judge has Memo).
- 12-10-73 Before TRAVIA, J. - Findings, Conclusions and Opinion filed (deft ROBERT MATHERSON). It is conceded that the facts are not in dispute and the parties have agreed that if the constitutionality of the law involved is upheld there can be no defense to the violations as charged. Defts. motions to have Title 18, 36 C.F.R. Sec. 7.20 declared unconstitutional is denied; defts. motion to dismiss is denied; motion for separate judgments of acquittal is denied. Court finds the deft. ROBERT MATHERSON guilty beyond a reasonable doubt of the charges separately alleged in the Informations 73 CR 691, 73 CR 692, 73 CR 693, 73 CR 694 and 73 CR 710. The Court finds that the deft. CAROLYN MATHERSON is guilty beyond a reasonable doubt of the charges separately alleged in the Informations 73 CR 696 and 73 CR 697.
- 12-21-73 Before TRAVIA, J. - case called - Deft. present - Counsel not present - Adjd to 1/4/74.
- 1-4-74 Waiver of Jury trial filed.
- 1-4-74 Before TRAVIA, J. - Case called - deft. and counsel Gerald Shargel present - Waiver of Trial by Jury signed by all parties. Court finds the deft. guilty - deft. moves for Judgment of Acquittal - Motion denied - Deft. waives pre sentence report. Imposition of prison sentence is suspended and deft. is placed on probation for one year. Deft. is to pay a fine of \$250.00. Stay of 10 days is granted for payment of fine.

1-4-74 Judgment and Order of Probation filed - certified copies to Probation.

1-8-74 Notice of appeal filed.

1-8-74 Docket entries and duplicate of notice of appeal mailed to C of A.

1-18-74 Judgment recvd. from the C of A filed that Index to Record be docketed on or before Jan. 28, 1974.

1-18-74 Satisfaction of Fine Judgment filed.

A TRUE COPY
ATTEST

DATED: 1/25/74

LEWIS ORGEL
CLERK

By: _____
DEPUTY CLERK

DOCKET ENTRIES

THE UNITED STATES)

v.) 73 CR 695

CAROLYN MATHERSON) (73 CR 696 and 697)

PROCEEDINGS

- 7-25-73 Information filed.
- 7-26-73 Before TRAVIA, J. - Case called - No appearance by deft - Bench warrant ordered.
- 7-26-73 Notice of appearance filed.
- 7-27-73 Bench Warrant issued.
- 9-17-73 Before Travia, J. - case called & adjd to 9-18-73 for Trial.
- 9-18-73 Before TRAVIA, J. - Case called for trial - Jury waived - Facts stipulated - Decision reserved - Deft's briefs by 10/10/73 - Govts brief by 10/17/73. Bail contd.
- 10-24-73 Consent and Stipulation filed that a search of the records at Fire Island National Seashore revealed that Carolyn Matherson had not been issued a permit, etc. (Stipulation dated 9/18/73).
- 12-11-73 By TRAVIA, J. - Findings, Conclusions and Opinion filed (see entry in 73 CR 691). Opinion filed in 73 CR 691.
- 12-21-73 Before TRAVIA, J. - Case called - Deft. not present - counsel not present - adjd. to 1/4/73

1- 4-74 Waiver of Jury trial filed.

1- 4-74 Before TRAVIA, J. - Case called - Deft. and counsel Gerald Shargel present - waiver of Trial by Jury signed by all parties. Court finds deft. guilty as charged in all cases, 73 CR 695, 696 and 697. Deft. moves for Judgment of Acquittal - motion denied - deft. waives pre-sentence report. Imposition of prison sentence is suspended and the deft. is placed on probation for one year. Deft. to pay a fine of \$100. Stay of 10 days is granted for payment of fine.

1- 4-74 Judgment and Order of Probation filed - certified copies to Probation.

1- 8-74 Notice of Appeal filed.

1- 8-74 Docket entries and duplicate of notice of appeal mailed to C of A.

1-18-74 Judgment received from the C of A filed that the Record be docketed on or before Jan. 28, 1974.

1-18-74 Satisfaction of Fine Judgment filed.

A TRUE COPY
ATTEST

DATED: 1/25/74

LEWIS ORGEL

/s/ By (illegible)
DEPUTY CLERK

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

ROBERT MATHERSON,

73 CR 691

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A. MORSE, United States Attorney for the Eastern District of New York, by DAVID A DE PETRIS, Assistant United States Attorney, Of Counsel, and JAMES M. LA ROSSA, ESQ., attorney for the defendant herein, that Martin Ott, if called, would testify to the following facts: He has been employed as a Park Ranger for the United States Park Service for one and one-half years. On Friday, August 18, 1972 at 12:00 noon, while conducting a vehicle survey at the Coast Guard Annex to the Fire Island National Seashore, he stopped a blue jeep with New York license number 5074HJ, which was being driven by Robert Matherson. At this time, Ott asked Robert Matherson for his Fire Island National Seashore permit. Robert Matherson responded that he did

not have a Fire Island National Seashore permit. Ott then told Matherson that he was traveling during restricted hours and asked to see Matherson's driver's license and vehicle registration. Further, Ott would testify that Robert Matherson had been warned on several prior occasions that he had to have a Fire Island National Seashore permit in order to drive on Fire Island, and in addition to these warnings, both he and his wife, Carolyn Matherson, had received prior and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. Ott then proceeded to advise Matherson that he was being cited for driving during restricted hours and driving without a permit on the Fire Island National Seashore. Robert Matherson responded that he knew he was in violation and to go ahead and write out the tickets in order that he could proceed on his way. A search of the records kept at the Fire Island National Seashore revealed that Robert Matherson did not have a Fire Island National Seashore permit. Ott would further testify that there was regular ferry service from Long Island to Kismet, Fire Island during this period of time and that it is approximately

two city blocks from the ferry dock at Kismet, Fire Island
to Robert Matherson's house on Fire Island.

Dated: Brooklyn, New York
September 18, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: DAVID A. DE PETRIS
Assistant U.S. Attorney

JAMES M. LA ROSSA, ESQ.
Attorney for the Defendant

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

73 CR 693

ROBERT MATHERSON,

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A. MORSE, United States Attorney for the Eastern District of New York, by DAVID A. DE PETRIS, Assistant United States Attorney, Of Counsel, and JAMES M. LA ROSSA, ESQ., attorney for the defendant herein, that Martin Ott, if called, would testify to the following facts: He has been employed as a Park Ranger for the United States Park Service for one and one-half years. On Friday, August 18, 1972 at 12:00 noon, while conducting a vehicle survey of the Coast Guard Annex to the Fire Island National Seashore, he stopped a blue jeep with New York license number 5074HJ, which was being driven by Robert Matherson. At this time, Ott asked Robert Matherson for his Fire Island National Seashore permit. Robert Matherson responded that he did

not have a Fire Island National Seashore permit. Ott then told Matherson that he was traveling during restricted hours and asked to see Matherson's driver's license and vehicle registration. Further, Ott would testify that Robert Matherson had been warned on several prior occasions that he had to have a Fire Island National Seashore permit in order to drive on Fire Island, and in addition to these warning, both he and his wife, Carolyn Matherson, had received prior and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. Ott then proceeded to advise Matherson that he was being cited for driving during restricted hours and driving without a permit on the Fire Island National Seashore. Robert Matherson responded that he knew he was in violation and to go ahead and write out the tickets in order that he could proceed on his way. A search of the records kept at the Fire Island National Seashore revealed that Robert Matherson did not have a Fire Island National Seashore permit. Ott would further testify that there was regular ferry service from Long Island to Kismet, Fire Island during this period of time and that it is approximately two city blocks from the

ferry dock at Kismet, Fire Island to Robert Matherson's
house on Fire Island.

Dated: Brooklyn, New York
September 18, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: _____
DAVID A. DE PETRIS
Assistant U.S. Attorney

JAMES M. LA ROSSA, ESQ.
Attorney for the Defendant

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

CAROLYN MATHERSON,

73 CR 695

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A. MORSE, United States Attorney for the Eastern District of New York, by David A. De Petris, Assistant United States Attorney, Of Counsel, and James M. La Rossa, Esq., attorney for the defendant herein, that Bruce T. Betcher, if called, would testify to the following facts: He has been employed as a Seasonal Park Technician for the United States Park Service for two months and one week. On Sunday, July 8, 1973 at 7:01 P.M., at the Coast Guard Annex to the Fire Island National Seashore, Carolyn Matherson, who was driving a blue jeep with New York license number 423SHU, was stopped and asked if she had a Fire Island National Seashore permit to which Carolyn Matherson replied in the negative. Carolyn Matherson was advised that if she took the

ferry to her home in Kismet, Fire Island, or if she parked her car in parking field 5 in the Robert Moses State Park, that she would not receive a citation for driving without a permit on the Fire Island National Seashore. Carolyn Matherson told Betcher that she wanted to go to her house on Fire Island and did not want to take the ferry or walk to her house. She then told Betcher to write up the citation and give it to her so she could proceed. Betcher would further testify that Carolyn Matherson as well as her husband Robert Matherson had received prior warnings and prior and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. Also, Betcher would testify that there was regular ferry service from Long Island to Kismet, Fire Island during this period of time and that it is approximately two city blocks from the ferry dock at Kismet, Fire Island to Carolyn Matherson's house on Fire Island. A search of the records at the Fire Island National Seashore revealed that Carolyn Matherson had not been issued a Fire Island National Seashore permit.

Dated: Brooklyn, New York
September 18, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: _____
David A. De Petris
Assistant U.S. Attorney

James M. La Rossa, Esq.
Attorney for Defendant

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

CAROLYN MATHERSON,

73 CR 696

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A MORSE, United States Attorney for the Eastern District of New York, by David A. De Petris, Assistant United States Attorney, Of Counsel, and James M. La Rossa, Esq., attorney for the defendant herein, that Carl Douhan, if called, would testify to the following facts: He has been employed as a Supervisory Park Ranger for the United States Park Service for five years. On Wednesday, July 18, 1973 at 11:05 P.M., Carolyn Matherson, who was driving a blue jeep with New York license number 423SHU, was stopped at the Coast Guard Annex to the Fire Island National Seashore for a routine permit check. When she said that she did not have a Fire Island National Seashore permit, she was told that she would have to turn around because she did

not have a Seashore permit. Carolyn Matherson stated that she just wanted to proceed to her house on Fire Island and to give her the citation because she and her husband, Robert Matherson, had a thick file and were building a case. Douhan, because of the late hour, offered her a ride to her residence for her and the two children if she would leave her vehicle at parking field 5 of the Robert Moses State Park. After some further conversation, she was again offered a ride to her destination, but she again declined. During the course of the conversation, Carolyn Matherson stated that she and her husband Robert Matherson were living in the Hamptons and that she only came to Fire Island about once a week to water her plants. At this point, Douhan issued Carolyn Matherson a citation for driving on Fire Island without a Seashore permit. Before handing the citation to Carolyn Matherson, Douhan advised her that if she turned around, she would not be given a citation and he would give her a ride to her house. She again declined, took the citation, and drove towards her house at Kismet, Fire Island. Douhan would further testify that Carolyn Matherson as well as her husband Robert Matherson has received prior warnings and prior

and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. A search of the records at the Fire Island National Seashore revealed that Carolyn Matherson had not been issued a Fire Island National Seashore permit.

Dated: Brooklyn, New York
September 18, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: _____
David A. De Petris
Assistant U.S. Attorney

James M. La Rossa, Esq.
Attorney for Defendant

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

73 CR 697

CAROLYN MATHERSON,

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A. MORSE, United States Attorney for the Eastern District of New York, by DAVID A. DE PETRIS, Assistant United States Attorney, Of Counsel, and JAMES M. LA ROSSA, ESQ., attorney for the defendant herein, that Carl Douhan, if called, would testify to the following facts: He has been employed as a Supervisor Park Ranger for the United States Park Service for five years. On Sunday, July 22, 1973 at 10:02 P.M., at the Coast Guard Annex to the Fire Island National Seashore, Carolyn Matherson, who was driving a blue jeep with New York license number 423SHU, was stopped during a routine permit check. Carolyn Matherson was asked for her driver's license and vehicle registration and further asked if she had a Fire Island National Seashore permit.

Carolyn Matherson refused to give Douhan her driver's license and vehicle registration and said that she was going to her house in Kismet, Fire Island and wanted a citation. Douhan advised Carolyn Matherson of the consequences of her proceeding to her house in Kismet, Fire Island and she stated that she understood. At this time, Douhan issued Carolyn Matherson a citation for driving without a permit on Fire Island Seashore and she proceeded to her house in Kismet, Fire Island. Douhan would further testify that both Carolyn Matherson and her husband Robert Matherson had received prior warnings and prior and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. A search of the records kept at the Fire Island National Seashore revealed that Carolyn Matherson did not have a Fire Island National Seashore permit.

Dated: Brooklyn, New York
September 17, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: _____
DAVID A. DE PETRIS
Assistant U.S. Attorney

JAMES M. LA ROSSA
Attorney for Defendant

STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

73 CR 710

ROBERT MATHERSON,

Defendant.

-----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between ROBERT A. MORSE, United States Attorney for the Eastern District of New York, by David A. De Petris, Assistant United States Attorney, Of Counsel, and James M. La Rossa, Esq., attorney for the defendant herein, that Warren H. Beitel, if called, would testify to the following facts: He has been employed as a Park Technician for the United States Park Service for six years. On Friday, June 8, 1973, at approximately 9:40 A.M., Beitel observed Robert Matherson driving a blue jeep with New York license number 423SHU from Kismet, Fire Island. At this time, Beitel halted the vehicle at the Coast Guard Annex to the Fire Island National Seashore and asked Robert Matherson if he had a valid Fire Island Seashore permit. Robert Matherson replied that he did not

have a Fire Island National Seashore permit and that he had not applied for either a Fire Island National Seashore permit or a Town of Islip permit. Beitel would further testify Robert Matherson had been warned on several prior occasions that he needed a Fire Island National Seashore permit in order to drive on Fire Island. In addition, Robert Matherson and his wife, Carolyn Matherson, had received several prior and subsequent citations for driving without a permit and driving during restricted hours on the Fire Island National Seashore. Beitel then issued Robert Matherson a citation for driving without a permit on the Fire Island National Seashore. A search of the records at the Fire Island National Seashore revealed that there had not been a permit issued to Robert Matherson. Beitel would further testify that there was regular ferry service from Long Island to Kismet, Fire Island during this period of time and that it is approximately two city blocks from the ferry dock at Kismet, Fire Island to Robert Matherson's house on Fire Island.

Dated: New York, New York
September 18, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

By: _____
David A. De Petris
Assistant U.S. Attorney

James M. La Rossa
Attorney for the Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, : Docket Nos.:
: 73-CR-691
-against- : 73-CR-692
ROBERT MATHERSON, : 73-CR-693
: 73-CR-694
: 73-CR-710

Defendant. : FINDINGS, CONCLUSIONS
AND OPINION

----- x December 10, 1973

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, : Docket Nos.:
: 73-CR-695
-against- : 73-CR-696
: 73-CR-697

CAROLYN MATHERSON, : FINDINGS, CONCLUSIONS
AND OPINION

Defendant. :

----- x December 10, 1973

APPEARANCES:

ROBERT A. MORSE, ESQ.
United States Attorney
Eastern District of New York

DAVID A. DE PETRIS
Assistant United States Attorney
Of Counsel

✓ JAMES M. LA ROSSA, ESQ.
522 Fifth Avenue
New York, New York 10036
Attorney for Defendants

TRAVIA, D. J.

23

These eight actions came on for trial on September 18, 1973. By agreement of all parties concerned the actions would be consolidated and the facts stipulated. A jury trial was waived and decision was reserved.

The defendant, ROBERT MATHERSON, by five separate Informations duly filed, has been charged with violations of Title 36 C.F.R., Section 7.20, subsection 2 and subsection 3 (Title 16, United States Code, Section 3).

The defendant, CAROLYN MATHERSON, by three separate Informations duly filed, has been charged with violations of Title 36 C.F.R., Section 7.20, subsection 2 and subsection 3 (Title 16, United States Code, Section 3).

DISCUSSION OF FACTS AND LAW

The defendants, ROBERT MATHERSON and CAROLYN MATHERSON, move to have Title 36 C.F.R. § 7.20 declared unconstitutional and the charges against them dismissed, or in the alternative, to have a Judgment of Acquittal entered.

ROBERT MATHERSON and CAROLYN MATHERSON have been charged with violation of Title 36 C.F.R. § 7.20 (2), (3) prohibiting the use of a motor vehicle without a permit and prohibiting the operation of a motor vehicle during restricted hours, respectively, within the boundaries of the Fire Island

National Seashore. The parties have agreed to stipulate to the relevant facts surrounding each alleged violation. As a result, the only issue before this court is the constitutionality of Title 36 C.F.R. § 7.20.

Congress has plenary power to make rules and regulations concerning the use of land belonging to the United States. ^{/1} This power is without limitation and preempts that of the Executive or of the several states unless Congress specifically authorizes the administration of public land by ^{/2} one or both of these governmental units.

Congress has authorized the Secretary of the Interior ("Secretary") to establish the Fire Island National Seashore. ^{/3} The Secretary is in charge of administering the National Seashore in a manner consistent with the general Congressional intent of preserving the natural resources located on Fire Island. ^{/4} In carrying out this delegated

/1 U.S. Const. art. 4 § 3, cl.2.

/2 Van Brocklin v. Tennessee, 117 U.S. 167, 168 (1886); Butte City Water Co. v. Baker, 196 U.S. 126 (1905); United States v. City and County of San Francisco, 310 U.S. 16, 29 (1940); United States v. State of California, 332 U.S. 19, 27 (1947); United States v. Husband R. (Roach), 453 F 2d 1054 (5th Cir.), cert. denied, 406 U.S. 935 (1972).

/3 Title 16 U.S.C. § 459 e (a).

/4 Title 16 U.S.C. § 459 e-6, (a).

duty, the Secretary may appoint subordinate officials and sub-delegate to them the necessary power needed to perform the day to day operations of the National Seashore. ^{/5} The Secretary has subdelegated such power to the Superintendent of the Fire Island National Seashore ("Superintendent"). In exercising his subdelegated power, the Superintendent, as the agent of the Secretary, promulgated rules and regulations governing the use ^{/6} of motor vehicles on National Seashore land.

Title 36 C.F.R. § 7.20 (2), (vii) provides:

"No permit will be issued by the Superintendent for any motor vehicle until the applicant has first secured from the towns of Brookhaven and/or Islip. . . an appropriate permit covering the same activity, use, and area of use for which a seashore permit is requested."

This rule and regulation which sets forth requirements to secure a National Seashore vehicular permit is not an invalid subdelegation of administrative authority to a local municipality. Furthermore, Title 36 C.F.R. § 7.20 (2), (vii) does not represent an unconstitutional usurpation of Congress'

^{/5} See e.g. United States v. Barenco, 50 F.Supp. 520, 528 (D.Md. 1943); Johnson v. United States, 206 F.2d 806, 809 (9th Cir. 1953). It should be noted that the Secretary remains ultimately responsible for the actions of his subordinates.

^{/6} Title 36 C.F.R. § 7.20.

power to make rules and regulations respecting property belonging to the United States.

The Fire Island National Seashore was established in 1964 for the purpose of conserving and preserving certain unspoiled and undeveloped beaches located on Fire Island.
^{/7}
New York. The Senate Committee on Interior and Insular Affairs originally remarked:

"On its field investigation of the area, the committee members were impressed with the fact that there are no ~~roads~~^{roads} traversing Fire Island and it is the intent of the committee that the Park Service continue in its present roadless state." ^{/8}

Both parties agree that the purpose of the Town of Islip Beach Buggy Ordinance and Title 36 C.F.R. § 7.20 is to prevent erosion on Fire Island. The local municipalities and the Superintendent of the National Seashore have endeavored to cooperate with each other to maintain the natural beauty of
^{/9}
Fire Island. It was in furtherance of this spirit of co-operation that the Superintendent promulgated Title 36 C.F.R. § 7.20 (2), (vii). This section is in no way an abdication of

/7 Supra note 3.

/8 U.S. Code Cong. and Admin. News, S.R. Doc. No. 1300, 88th Cong., 2d Sess. 3711 (1964).

/9 See Town of Islip Beach Buggy Ordinance, supra note 6.

the Superintendent's power to administer the National Seashore. Rather, the instant section merely exemplifies an effort by the Superintendent to facilitate the orderly prevention of erosion on the island. The Superintendent still makes the ultimate determination of whether to grant a vehicular permit to travel on National Seashore land. Similarly, the Town of Islip Beach Buggy Commission makes the final determination of whether to grant a vehicular permit to travel on land within the Town of Islip on Fire Island. The Town of Islip Beach Buggy Commission has absolutely no power to grant a vehicular permit for the National Seashore. ^{/10} Moreover, the practicalities of the situation dictate that such a regulation be in existence. The local municipalities and the National Seashore are contiguous. Here, while the defendants do not allege to be year round residents of Fire Island, they have a house at 90 West Lighthouse Walk Kismet, Fire Island and in order to reach Kismet by motor vehicle, one must travel across the Robert Moses Bridge and then proceed eastward on public roads owned by the state or federal government. The final approach to Kismet is a sandy, unpaved road owned by the state and capable of being traversed only by four wheel drive vehicles.

Once at Kismet, the only avenues of transportation are unpaved passageways approximately six feet wide. Consequently, it is apparent that a vehicular permit from the National Seashore is of little value without the corresponding vehicular permit from the appropriate local municipality. More specifically, an individual holding only a National Seashore vehicular permit would be prohibited from traversing state land and thereby be precluded from ever reaching the National Seashore by motor vehicle. The promulgation of Title 36 C.F.R. § 720 (2), (vii) has foreclosed the possibility of such an anomaly ever existing. This regulation requires that one first obtain a permit from the requisite local municipality before a similar permit will be issued by the Superintendent.

The courts have upheld similar grants of administrative power to the states in order to expedite federal, state cooperation. For example, in Gauly Mountain Coal Co. v. Director of U.S.B. of Mines, 224 F.2d 887 (4th Cir. 1955), the court upheld a federal statute which required the state classification of a mine as a condition precedent to federal regulation. In so holding the court stated:

"There is no delegation by Congress of its own power to a state agency, but merely the accept-

ance by Congress of state action as the condition upon which its exercise of power is to become effective." /11

Along this same line, the Supreme Court sustained the constitutionality of the so called Webb-Kenyon Act against an attack that the act improperly delegated federal authority to the states. /12 In delivering the opinion of the Court, Chief Justice White aptly related:

"The argument as to delegation to the states rests upon a mere misconception. It is true the regulation which the Webb-Kenyon Act contains permits state prohibitions to apply to movements of liquor from one state into another, but the will which causes the prohibitions to be applicable is that of Congress, since the application of state prohibitions would cease the instant the act of Congress ceased to apply."/13

Here, the defendants seem to be laboring under the same misconception. If Title 16 U.S.C. § 459 e-6 ceased to apply, then the Superintendent would be without power to promulgate rules and regulations governing vehicular traffic on National Seashore land. Concomitantly, the Town of Islip Beach Buggy Commission would be without power to affect the issuance of a National Seashore vehicular permit. Moreover, the state's

/11 Gauly Mountain Coal Co. v. Director of the U.S.B. of Mines, 224 F.2d 887, 890 (4th Cir. 1955).

/12 Clark Distilling Co. v. Western Maryland R.Co., 212 U.S. 311 (1917).

/13 Id. at 327

delegated authority in Gauly and Clark Distilling Co. v. Western Maryland R. Co., 212 U.S. 311 (1917) was far more extensive than the local municipalities' delegated authority under the instant regulation. In those two cases, the state's classification was final and all that remained was to apply the federal regulation. In contrast, under Title 36 C.F.R. § 7.20 the Superintendent retains the ultimate decision-making power. Significantly, no National Seashore vehicular permit shall issue unless the Superintendent so decrees.

The defendants next argue that the Superintendent's arbitrary and capricious issuance of special permits to individuals on the basis of hardship renders Title 36 C.F.R. § 7.20 invalid. This argument is without merit. The Superintendent has only issued special permits to those individuals who qualify on the basis of age and infirmity. Concomitantly, the standards for the issuance of special permits are clear; age and infirmity. Moreover, the fact that the Superintendent may have improperly issued special permits is not grounds for holding Title 36 C.F.R. § 7.20 unconstitutional. The defendants' assertion is more properly addressed to the individual misconduct of the Superintendent. ^{/14} Official misconduct

/14 See, e.g. Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949); Dugan v. Rank, 372 U.S. 609 (1963). 31

may be of an unconstitutional nature, but it does not follow that such misconduct renders the applicable regulation unconstitutional in its entirety. Title 36 C.F.R. § 7.20 is constitutional on its face as a valid subdelegation of administrative authority.

The defendants also maintain that the absence of specific standards governing the issuance of special permits on the basis of hardship renders the Town of Islip Beach Buggy Ordinance vague and, therefore, invalid. This ordinance is not ripe for review in the context of the instant federal criminal proceeding. The defendants have been charged with motor vehicle violations on National Seashore land. The defendants have not been charged with any similar violations on land within the Town of Islip.

The mere fact that the Superintendent has promulgated a rule and regulation which requires an individual to first secure a permit from the Town of Islip Beach Buggy Commission as one of the prerequisites to the issuance of a National Seashore permit does not warrant a full consideration of the constitutionality of the Town of Islip Beach Buggy Ordinance. The issue before this court is the constitutionality of Title 36 C.F.R. § 7.20 and not the constitutionality of the aforementioned ordinance.

The parties have submitted memoranda of law and the same have been considered.

Findings of Fact

It is conceded that the facts are not in dispute and the parties have agreed that if the constitutionality of the law involved is upheld there can be no defense to the violations as charged.

Conclusions

The defendants' motion to have Title 36 C.F.R., § 7.20 declared unconstitutional is denied.

The defendants' motion to dismiss the charges in the separate Informations is denied.

The defendants' motion for separate judgments of acquittal is denied.

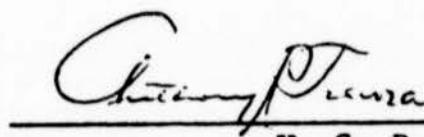
This court finds that the defendant, ROBERT MATHERSON, is guilty beyond a reasonable doubt of the charges separately alleged in the Informations 73-CR-691, 73-CR-692, 73-CR-693, 73-CR-694 and 73-CR-710.

This court finds that the defendant, CAROLYN MATHERSON, is guilty beyond a reasonable doubt of the charges separately alleged in the Informations 73-CR-695, 73-CR-696 and 73-CR-697.

ORDER

It is

ORDERED, that the defendants, ROBERT MATHERSON and CAROLYN MATHERSON, and their attorney appear before this court, in Courtroom 9, on December 21, 1973, at 10:00 A.M., at which time the court shall pronounce judgment and make such other rulings and orders that may be necessary.



U. S. D. J.

JUDGMENT AND ORDER OF PROBATION
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

No. 73 CR 691

ROBERT MATHERSON

On this 4th day of Jan., 1974, came the attorney for the government and the defendant appeared in person, and with counsel GERALD SHARGEL, Esq.

IT IS ADJUDGED that the defendant found guilty by the Court (Jury Waived) has been convicted of the offense of violating Title 16, U.S.C., Section 3 as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that imposition of prison sentence is

suspended and defendant is placed on probation for a period of 1 year, subject to the standard conditions of probation as set forth in the standing order of this Court dated October 13, 1964. Defendant to pay a fine of \$250.00. Stay of 10 days is granted for payment of fine.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

/s/ ANTHONY J. TRAVIA
United States District Judge

JUDGMENT AND ORDER OF PROBATION
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)
v.) No. 73 CR 695
CAROLYN MATHERSON) (696 and 697)

On this 4th day of January, 1974, came the attorney
for the government and the defendant appeared in person, and
with counsel GERALD SHARGEL, Esq.

IT IS ADJUDGED that the defendant, found guilty by the
Court (JURY WAIVED), has been convicted of the offense of
violating Title 16, U.S.C., Section 3 as charged, and the
court having asked the defendant whether she has anything
to say why judgment should not be pronounced, and no suffi-
cient cause to the contrary being shown or appearing to the
court,

IT IS ADJUDGED that the defendant is guilty as charged
and convicted.

IT IS ADJUDGED that imposition of prison sentence is suspended and defendant is placed on probation for a period of 1 year, subject to the standard conditions of probation as set forth in the standing order of this Court dated October 13, 1964. Defendant to pay a fine of \$100.00. Stay of 10 days is granted for payment of fine.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct herself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

/s/ ANTHONY J. TRAVIA
United States District Judge

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 691

ROBERT MATHERSON,

Defendant.

-----X
SIR:

PLEASE TAKE NOTICE that ROBERT MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$250.00 and given a suspended term of imprisonment. In addition, the defendant was placed on probation for a period of one year.

Dated: New York, New York
January 7th, 1974

Yours, etc.

TO:
HON. EDWARD BOYD.
Acting U.S. Attorney
Eastern District of N.Y.
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

JAMES M. LA ROSSA
Attorney for Defendant
ROBERT MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

v.

No. 73 CR 692

ROBERT MATHERSON,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that ROBERT MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$250.00 and given a suspended term of imprisonment. In addition, the defendant was placed on probation

for a period of one year. This sentence is to run consecutive to information No. 73 CR 691.

Dated: New York, New York
January 7th, 1974

Yours, etc.

JAMES M. LA ROSSA
Attorney for Defendant
ROBERT MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036

TO:

HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 693

ROBERT MATHERSON,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that ROBERT MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$250.00 and given a suspended term of imprisonment. In addition, the defendant was placed on probation for a period of one year. This sentence is to

run consecutive to information No. 73 CR 691.

Dated: New York, New York
January 7th, 1974

Yours, etc.

JAMES M. LA ROSSA
Attorney for Defendant
ROBERT MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036

TO:

HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

v.

ROBERT MATHERSON,

No. 73 CR 694

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that ROBERT MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$250.00 and given a suspended term of imprisonment. In addition, the defendant was placed on probation for a period of one year. This sentence is to run consecutive

to information No. 73 CR 691.

Dated: New York, New York
January 7th, 1974

Yours, etc.

JAMES M. LA ROSSA
Attorney for Defendant
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036

TO:

HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

v.

No. 73 CR 710

ROBERT MATHERSON,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that ROBERT MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was given a suspended term of imprisonment to run consecutive with information No. 73 CR 691.

Dated: New York, New York
January 7th, 1973

Yours, etc.

TO:

HON. EDWARD BOYD
Acting U.S. Attorney
Eastern District of N.Y.

JAMES M. LA ROSSA
Attorney for Defendant
ROBERT MATHERSON

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 695

CAROLYN MATHERSON,

Defendant.

-----X
SIR:

PLEASE TAKE NOTICE that CAROLYN MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against her by the Hon. Anthony J. Travia on January 4, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$100 and given a suspended term of imprisonment. In addition, the defendant was placed on probation for a period of one year.

Dated: New York, New York
January 7th, 1974

Yours, etc.

TO:
HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

JAMES M. LA ROSSA
Attorney for Defendant
CAROLYN MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 696

CAROLYN MATHERSON,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that CAROLYN MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against her by the Hon. Anthony J. Travia on January 4th, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was fined in the amount of \$100 and given a suspended term of imprisonment. In addition, the defendant was placed on probation for a period of one year. This sentence is to run consecutive to information No. 73 CR 695.

Dated: New York, New York
January 7th, 1974

Yours, etc.

TO:
HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

JAMES M. LA ROSSA
Attorney for Defendant
CAROLYN MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 697

CAROLYN MATHERSON,

Defendant.

-----X
S I R :

PLEASE TAKE NOTICE that CAROLYN MATHERSON hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against her by the Hon. Anthony J. Travia on January 4, 1974, wherein the defendant was convicted of violating Title 36, CFR, Section 7.20, sub-section 2 and sub-section 3 (Title 16, United States Code, Section 3). On this conviction, the defendant was sentenced to a suspended term of imprisonment, placed on probation for a period of one year and fined in the amount of \$100. This sentence is to run consecutive to information No. 73 CR 695.

Dated: New York, New York
January 7th, 1974

Yours, etc.

TO:
HON. EDWARD BOYD
Acting United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

JAMES M. LA ROSSA
Attorney for Defendant
CAROLYN MATHERSON
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

TOWN OF ISLIP



SUFFOLK COUNTY, N.Y.
TOWN HALL, ISLIP
JUN 14 1973

Beach-Buggy Commission

FIRE ISLAND ADVISORY COMMISSION

TO: Whom It May Concern
FROM: Fire Island Advisory Commission
DATE: June 7, 1973

This is to advise you that Walter Neilson of Kismet is hereby given permission to leave the beach at approximately 2:45 p.m. on working days as his hours of employment do not coincide with the hours of permitted travel on Fire Island.

The burden of proof rests with the user of this permit to prove he is engaged in the above mentioned use.

Sincerely,

Richard J. Trimmel
Richard J. Trimmel, Chairman
Fire Island Advisory Commission

RJT:11

cc: Suffolk County Police Department
Fire Island National Seashore

Service of three (3) copies of the within

is hereby admitted
this day of

copy received

MAY 4 1974

U.S. ATTORNEY
S.D. DIST. OF N.Y.

Attorney(s) for